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6 | Attorneys for Plaintiffs, Trustees of the Southern California
Pipe Trades Health and Welfare Trust Fund, et al.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

1 TRUSTEES OF THE SOUTHERN
2 CALIFORNIA PIPE TRADES HEALTH
3 AND WELFARE TRUST FUND;
4 TRUSTEES OF THE SOUTHERN
5 CALIFORNIA PIPE TRADES
6 PENSIONERS AND SURVIVING
7 SPOUSES HEALTH FUND; TRUSTEES
8 OF THE SOUTHERN CALIFORNIA
9 PIPE TRADES RETIREMENT TRUST
0 FUND; TRUSTEES OF THE
1 SOUTHERN CALIFORNIA PIPE
2 TRADES DEFINED CONTRIBUTION
3 TRUST FUND; TRUSTEES OF THE
4 SOUTHERN CALIFORNIA PIPE
5 TRADES VACATION AND HOLIDAY
6 TRUST FUND; TRUSTEES OF THE
7 SOUTHERN CALIFORNIA PIPE
8 TRADES CHRISTMAS BONUS FUND;
9 TRUSTEES OF THE APPRENTICE AND
0 JOURNEYMAN TRAINING TRUST
1 FUND; TRUSTEES OF THE PLUMBERS
2 AND PIPEFITTERS NATIONAL
3 PENSION FUND; and TRUSTEES OF
4 THE INTERNATIONAL TRAINING
5 FUND.

24 || Plaintiffs.

25

vs.

**26 CIRCULATING AIR, INC.,
a California corporation**

Defendant.

Case No. 2:23-CV-8624

COMPLAINT FOR:

- 1. BREACH OF COLLECTIVE BARGAINING AGREEMENTS, TRUST AGREEMENTS, AND VIOLATION OF ERISA.**
 - 2. BREACH OF CONTRACT.**

1 Plaintiffs, Trustees of the Southern California Pipe Trades Health and Welfare
2 Trust Fund, Trustees of the Southern California Pipe Trades Pensioners and Surviving
3 Spouses Health Fund, Trustees of the Southern California Pipe Trades Retirement
4 Trust Fund, Trustees of the Southern California Pipe Trades Defined Contribution
5 Trust Fund, Trustees of the Southern California Pipe Trades Vacation and Holiday
6 Trust Fund, Trustees of the Southern California Pipe Trades Christmas Bonus Fund,
7 Trustees of the Apprentice and Journeyman Training Trust Fund, Trustees of the
8 Plumbers and Pipefitters National Pension Fund, and Trustees of the International
9 Training Fund (collectively the “Trustees”), complain and allege:

10 **JURISDICTION AND VENUE**

11 1. This Court has jurisdiction of the case pursuant to section 502(e)(1) of the
12 Employee Retirement Income Security Act of 1974, as amended (“ERISA”) [29 U.S.C.
13 § 1132(e)(1)], which grants the United States District Courts jurisdiction over civil
14 actions brought by a fiduciary pursuant to section 502(a)(3) of ERISA [29 U.S.C.
15 § 1132(a)(3)] to redress violations or enforce the terms of ERISA or an employee
16 benefit plan governed by ERISA. Such jurisdiction exists without respect to the amount
17 in controversy or the citizenship of the parties, as provided in section 502(f) of ERISA
18 [29 U.S.C. § 1132(f)].

19 2. This Court also has jurisdiction of this case pursuant to section 301(a) of
20 the Labor Management Relations Act of 1947, as amended (“LMRA”) [29 U.S.C.
21 § 185(a)], which grants the United States original jurisdiction over suits for violation
22 of contracts between an employer and a labor organization in an industry affecting
23 commerce, without respect to the amount in controversy and the citizenship of the
24 parties.

25 3. Venue is proper in this Court pursuant to section 502(e)(2) of ERISA [29
26 U.S.C. § 1132(e)(2)], and section 301(a) of the LMRA [29 U.S.C. § 185(a)], in that
27 this is the district in which the plaintiffs’ trust funds are administered, in which the
28 relevant acts took place, and in which monies are due and payable.

4. To the extent this complaint sets forth any state law claims, this Court has supplemental jurisdiction over those claims pursuant to 28 U.S.C. § 1337(a).

PARTIES

4 5. Plaintiffs are the Trustees of the Southern California Pipe Trades Health
5 and Welfare Trust Fund, Southern California Pipe Trades Pensioners and Surviving
6 Spouses Health Fund, Southern California Pipe Trades Retirement Trust Fund,
7 Southern California Pipe Trades Defined Contribution Trust Fund, Southern California
8 Pipe Trades Vacation and Holiday Trust Fund, Southern California Pipe Trades
9 Christmas Bonus Fund, Apprentice and Journeyman Training Trust Fund (collectively
10 the “Local Trusts”), Plumbers and Pipefitters National Pension Fund (the “National
11 Trust”), and the International Training Fund (the “International Trust”). Collectively,
12 the Local Trusts, National Trust and International Trust are referred to collectively as
13 the “Trusts.” The Trusts are express trusts created pursuant to written agreements and
14 declarations of trust (the “Trust Agreements”) between the Southern California Pipe
15 Trades District Council No. 16 of the United Association of Journeymen and
16 Apprentices of the Plumbing and Pipefitting Industry (“District Council 16”) and
17 various employer associations in the plumbing and pipefitting industry in Southern
18 California, or between District Council 16, and other councils of the United
19 Association of Plumbers and Pipefitters, and various employer associations across the
20 United States. The Trusts are now, and were at all times material to this action, labor-
21 management multiemployer trusts created and maintained pursuant to section
22 302(c)(5) of the LMRA [29 U.S.C. § 186(c)(5)].

23 6. The Trustees are “fiduciary[ies]” with respect to the Trusts as defined in
24 section 3(21)(A) of ERISA [29 U.S.C. § 1002(21)(A)].

25 7. At all times material herein defendant Circulating Air, Inc. ("Circulating
26 Air") has been a corporation organized under the laws of California, with a principal
27 place of business located in Los Angeles County, California.

28 | ///

1 8. Circulating Air is an “employer” engaged in “commerce” in an “industry
2 affecting commerce,” as those terms are defined and used in sections 501(1) and 501(3)
3 of the LMRA [29 U.S.C. §§ 142(1), 142(3)], and within the meaning and use of section
4 301(a) of the LMRA [29 U.S.C. § 185(a)].

EXECUTION OF BARGAINING AGREEMENTS

6 9. At all material times herein, Circulating Air has been a member of the
7 Airconditioning, Refrigeration and Mechanical Contractors Association of Southern
8 California (“ARCA/MCA”), a multiemployer association. As an ARCA/MCA
9 member, Circulating Air authorized ARCA/MCA to act as its agent for the purpose of
10 collective bargaining with District Council 16 and its representative local unions.
11 Through this authorization, Circulating Air is bound by the terms and conditions of the
12 (A) Southern California Airconditioning and Refrigeration Service Master Labor
13 Agreement between ARCA/MCA and District Council 16, and (B) Master Agreement
14 for the Plumbing and Piping Industry of Southern California between ARCA/MCA and
15 District Council 16 (collectively the “Master Agreements”).

16 10. The Master Agreements incorporate by reference the Trust Agreements.
17 At all times material herein, Circulating Air has been bound to the Trust Agreements.

FIRST CAUSE OF ACTION

**19 BREACH OF WRITTEN COLLECTIVE BARGAINING AGREEMENTS,
20 TRUST AGREEMENTS, AND VIOLATION OF ERISA**

21 11. The Trustees incorporate by this reference paragraphs 1 through 10 above,
22 inclusive of any subparagraphs, to the same effect as if set forth verbatim.

23 12. By the terms and provisions of the Master Agreements and/or Trust
24 Agreements, and at all times material herein, Circulating Air agreed, and was obligated
25 to the following:

26 A. Prepare and submit true, complete and accurate written monthly
27 contribution reports (“Reports”) to the Trusts on a timely basis showing: (i) the
28 identities of employees performing work covered by the Master Agreements on which

1 fringe benefit contributions are owed; (ii) the number of hours worked by these
2 employees; (iii) the rates of pay; (iv) the character of hours worked (e.g., straight time,
3 over-time, etc.); and (v) based upon the hours worked by employees, the proper
4 calculation of contributions, benefits and/or withholdings attributable to the same
5 employees. Such monthly contribution reports are due on the 10th day of each
6 successive month;

7 B. Pay to the Trusts contributions and/or withholdings on a monthly
8 basis, and at specified rates for each hour worked by applicable employees. These
9 amounts are considered delinquent if not received by the Trusts by the 15th of the month
10 succeeding the month in which the work was performed. These amounts are due and
11 payable at the Trusts' administrative offices in Los Angeles, California; and

12 C. Permit the Trustees and their agents to conduct audits of payroll and
13 related records in order to determine if contributions have been properly paid pursuant
14 to the Master Agreements, and/or Trust Agreements.

15 13. Circulating Air is an "employer," "contractor," and/or "subcontractor" as
16 those terms are understood in the Master Agreements and/or Trust Agreements.

17 14. Circulating Air is an "employer" as defined and used in section 3(5) of
18 ERISA [29 U.S.C. § 1002(5)].

19 15. Section 515 of ERISA [29 U.S.C. § 1145], provides that "every employer
20 who is obligated to make contributions to a multiemployer plan under the terms of the
21 plan or under the terms of a collectively bargained agreement shall, to the extent not
22 inconsistent with law, make such contributions in accordance with the terms and
23 conditions of such plan or such agreement." Pursuant to section 515 of ERISA [29
24 U.S.C. § 1145], Circulating Air is obligated to make contributions to the Trusts.

25 16. Sections 429 of ERISA [29 U.S.C. § 1059], provides that "every employer
26 shall ... maintain records with respect to each of his employees sufficient to determine
27 the benefits due or which may become due to such employees." Pursuant to section
28 429 of ERISA [29 U.S.C. § 1059], Circulating Air is obligated to maintain records

1 sufficient to allow the Trustees to determine the contributions owed by Circulating Air
2 to the Trusts, and the benefits due to the employees of Circulating Air.

3 17. Plaintiffs are informed and believe and thereon allege that during the four-
4 year period prior to the filing of this Complaint, Circulating Air performed a substantial
5 amount of work covered by the Master Agreements, but that Circulating Air failed to
6 report or pay fringe benefit contributions to Plaintiffs based on this work. Circulating
7 Air's failure to report and pay fringe benefit contributions to Plaintiffs is a breach of
8 the Master Agreements and Trust Agreements, and is a violation of section 515 of
9 ERISA [29 U.S.C. § 1145]. The full extent of fringe benefit contributions owed by
10 Circulating Air is presently unknown to Plaintiffs, but this amount will be established
11 by proof.

12 18. Plaintiffs are informed and believe and thereon allege that at all times
13 material herein, Circulating Air has been "delinquent," as that term is used in the
14 Master Agreements and/or related Trust Agreements.

15 19. Pursuant to section 502(g)(2) of ERISA [29 U.S.C. § 1132(g)(2)], in any
16 action by a fiduciary in which judgment is found in favor of the plan, this Court shall
17 award the plan: (A) the unpaid contributions; (B) interest on the unpaid contributions;
18 (C) an amount equal to the greater of interest on the unpaid contributions or liquidated
19 damages provided for under the plan in an amount not in excess of 20% of the unpaid
20 contributions; (D) reasonable attorneys' fees and costs; and (E) such other legal or
21 equitable relief as this Court deems appropriate. Interest on unpaid contributions shall
22 be determined by using the rate provided under the plan.

23 20. Pursuant to the Master Agreements, Trust Agreements, and section
24 502(g)(2)(C) of ERISA [29 U.S.C. § 1132(g)(2)(C)], Circulating Air is obligated to
25 pay to the Trusts liquidated damages for the detriment caused by Circulating Air's
26 failure to pay contributions in a timely manner. Pursuant to the written Joint Collection
27 Policy and Procedures ("Joint Collection Policy") promulgated by the Trustees
28 pursuant to the authority granted to them by the Master Agreements and Trust

1 Agreements, those liquidated damages are assessed at ten percent (10%) of the unpaid
 2 or untimely contributions. However, if a lawsuit is filed to collect the unpaid
 3 contributions, the Joint Collection Policy provides for liquidated damages assessed at
 4 twenty percent (20%) of the unpaid or late contributions. The amount of liquidated
 5 damages owed by Circulating Air will be established by proof.

6 21. Pursuant to the Master Agreements, Trust Agreements, Joint Collection
 7 Policy, and section 502(g)(2)(B) of ERISA [29 U.S.C. § 1132(g)(2)(B)], Circulating
 8 Air owes the Trusts interest at 18% per annum on all unpaid or untimely contributions
 9 from the dates the sums were originally due or should have been paid to the Trusts,
 10 until actually paid. The amount of interest owed by Circulating Air will be established
 11 by proof.

12 22. The Trustees are informed and believe, and thereon allege, that
 13 Circulating Air owes, but has failed to pay to the Trusts additional contributions and
 14 other amounts in breach of the Master Agreements and/or Trust Agreements, and in
 15 violation of section 515 of ERISA [29 U.S.C. § 1145], in amounts not presently known
 16 to the Trustees, but these additional amounts will be established by proof.

17 23. By the Master Agreements, Trust Agreements, Joint Collection Policy,
 18 and section 502(g)(2)(D) of ERISA [29 U.S.C. § 1132(g)(2)(D)], Circulating Air
 19 agreed that in the event of any delinquency, it would pay all legal and auditing fees and
 20 costs in connection therewith, whether incurred before or after litigation is commenced.
 21 The Trusts have incurred legal and auditing fees and costs as a result of Circulating
 22 Air's failure to pay contributions to the Trusts. The exact amount of the legal and
 23 auditing fees and costs due and payable has not been ascertained at this time. These
 24 amounts shall be established by proof.

25 24. By the Master Agreements and Trust Agreements, Circulating Air agreed
 26 in the event it failed to pay contributions or otherwise comply with the terms and
 27 provisions of those agreements, to post and deliver either a good faith deposit, or a
 28 performance bond issued in favor of the Trusts. The Trustees are informed and believe,

1 and thereon allege, that the Trusts are entitled to such good faith deposit and delivery
 2 of monies or bond from Circulating Air. The amount of the good faith deposit or bond
 3 will be established by proof at trial.

4 25. Pursuant to section 502(g)(2) of ERISA [29 U.S.C. § 1132(g)(2)], the
 5 Court may grant such other legal or equitable relief as the Court deems appropriate. As
 6 part of the Trustees' judgment, the Trustees shall also request the Court to:

7 A. Order Circulating Air, to provide a full and complete accounting
 8 for, and tracing the use of, all unpaid contributions and identify all property, real or
 9 personal, tangible or intangible, that are the result, whether in whole or in part, of the
 10 use of any contributions;

11 B. Order Circulating Air to post and deliver either a good faith deposit,
 12 or a performance bond issued in favor of the Trusts, in an amount determined by the
 13 Court to be appropriate;

14 C. Order the creation of a constructive trust on all applicable property,
 15 and order the transfer of the applicable property to the Trusts; and

16 D. Order Circulating Air to pay to the Trusts all amounts due the
 17 Trusts, including, but not limited to, the unpaid contributions, benefits, withholdings,
 18 damages, legal fees, audit fees and other expenses and damages incurred.

19 **SECOND CAUSE OF ACTION**

20 **BREACH OF CONTRACT**

21 26. The Trustees incorporate by this reference paragraphs 1 through 25 above,
 22 inclusive of any subparagraphs, to the same effect as if set forth verbatim.

23 27. The Trustees are informed and believe, and thereon allege, that amounts
 24 due as union dues and association fees and related amounts (excluding employer and
 25 employee contributions) are not subject to the requirements under ERISA.

26 28. The Master Agreements and Joint Collection Policy require Circulating
 27 Air to pay to the Trustees, for the benefit of District Council 16, its affiliated local
 28 unions, the Piping Industry Progress Education & Trust Fund ("PIPE"), the Labor

1 Management Compliance Council (“LMCC”), and ARCA/MCA certain amounts for
2 each hour worked by Circulating Air’s employees performing work covered by the
3 Master Agreements. The Trustees are the assignee of District Council 16, its affiliated
4 local unions, PIPE, LMCC, and ARCA/MCA for collecting said hourly contributions.
5 Circulating Air has failed to pay amounts due under the Master Agreements to the
6 Trustees for the benefit of District Council 16, its affiliated local unions, PIPE, LMCC
7 and ARCA/MCA, which amounts shall be established by proof.

8 29. Pursuant to the Master Agreements and Joint Collection Policy,
9 Circulating Air is obligated to pay to the Trusts liquidated damages on all unpaid or
10 delinquent contributions (including those amounts due to District Council 16, its
11 affiliated local unions, PIPE, LMCC and ARCA/MCA). Pursuant to the Joint
12 Collection Policy liquidated damages are assessed at ten percent (10%) of the unpaid
13 or untimely contributions. However, if a lawsuit is filed to collect the contributions, the
14 Joint Collection Policy provides for liquidated damages assessed at twenty percent
15 (20%) of the unpaid or untimely amounts. The amount of liquidated damages owed by
16 Circulating Air will be established by proof.

17 30. Pursuant to the Master Agreements and the Joint Collection Policy,
18 Circulating Air owes the Trusts interest at 18% per annum on all unpaid or delinquent
19 contributions (including those amounts due to District Council 16, its affiliated local
20 unions, PIPE, LMCC and ARCA/MCA) from the dates the sums were originally due
21 or should have been paid to the Trusts until paid. The amount of interest owed by
22 Circulating Air will be established by proof.

PRAYER

24 WHEREFORE, the Trustees pray for judgment as follows:

25 1. For unpaid contributions and other damages for breach of contract as
26 established by proof;

27 || 2. For liquidated damages as established by proof;

28 | //

1 3. For interest at the rate of 18% per annum, or other applicable legal rate,
 2 on all contributions due from their respective due dates, or the dates said contributions
 3 should have been paid, until paid, plus additional amounts as established by proof;
 4 4. For special damages in amounts as proved;
 5 5. For the Trustees' audit costs, plus additional amounts as established by
 6 proof;
 7 6. For the Trustees' reasonable attorneys' fees in amounts as proved;
 8 7. For costs of suit incurred herein; and
 9 8. For such additional relief as this Court deems just and proper, including,
 10 but not limited to, the following:

11 A. An Order directing Circulating Air, its representatives, agents and
 12 associates, to provide a full and complete accounting for, and tracing the use of all
 13 unpaid contributions and identify all property, real or personal, tangible or intangible,
 14 that are the result, whether in whole or in part, of the use of any unpaid contributions;

15 B. An Order for the creation of a constructive trust on all applicable
 16 property, and an Order for the transfer of the applicable property to the Trusts; and

17 C. An Order directing Circulating Air, its representatives, agents and
 18 associates, to pay to the Trusts all amounts due the Trusts, including, but not limited
 19 to, the unpaid contributions, benefits, withholdings, damages, legal fees, audit fees and
 20 other expenses and damages incurred.

22 Dated: October 12, 2023

BUSH GOTTLIEB, A Law Corporation

23 By:



24 J. Paul Moorhead

25 Adrian R. Butler

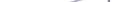
26 Attorneys for Plaintiffs, Trustees of the Southern
 27 California Pipe Trades Health and Welfare Trust
 28 Fund, et al.

WAIVER OF JURY TRIAL

Plaintiffs waive a jury trial in this action.

Dated: October 12, 2023

BUSH GOTTLIEB, A Law Corporation

By: 

J. Paul Moorhead

Adrian R. Butler

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